

## COUNCIL COMMUNICATION

TO: THE CITY COUNCIL  
FROM: THE CITY MANAGER'S OFFICE

COUNCIL MEETING DATE  
February 3, 1986

NO.

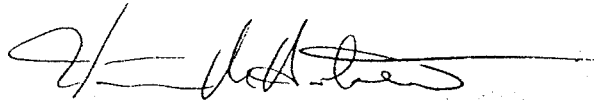
SUBJECT:

Resolution Establishing Delegation of Authority and Procedure For Industrial Disability Retirement - Local Safety Members

RECOMMENDED ACTION: That the city Council Adopt the attached resolution for the Delegation of authority to the City Manager to make determinations for Local Safety Members and setting forth procedure for Industrial Disability Retirement Determinations.

BACKGROUND: The proposed resolution represents a total up-date of the Resolution No. 4034 adopted by the City Council in 1975 authorizing authority to be delegated from the City Council to the City Manager for determinations of Industrial/Non-Industrial Disability of Local Safety Members ( Police, Fire) .

The attached Resolution up-dates the procedures to comply with the Administrative Procedures Act (APA) as a result of recent appellate court decisions dealing with the applicability if the (APA) to disability retirement litigation.



William M. Hinkle  
Administrative Assistant

RESOLUTION NO. 88-16

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LODI CELEBRATING  
AUTHORITY TO THE CITY MANAGER PURSUANT TO SECTION 21034 OF THE  
GOVERNMENT CODE OF THE STATE OF CALIFORNIA TO MAKE DETERMINATIONS  
REGARDING INDUSTRIAL DISABILITY RETIREMENTS THEREUNDER, TO  
ESTABLISH A PROCEDURE INDUSTRIAL DISABILITY RETIREMENT  
DETERMINATIONS, AND RESCINDING RESOLUTIONS NO. 4032

WHEREAS, the City of Lodi (hereinafter referred to as agency)  
is a contracting agency of the Public Employee's Retirement System;

WHEREAS, the Public Employees Retirement Law requires that a  
contracting agency determine whether an employee of such agency in  
employment in which he/she is classified as a local safety member is  
disabled for purposes of the Public Employee's Retirement Law and  
whether such disability is "industrial" within the meaning of such law.

WHEREAS, the City Council has determined upon legal advice  
that it may delegate authority under Section 21034 of the Government  
Code to make such determinations to the incumbent of the office of City  
Manager.

NOW, THEREFORE, BE IT RESOLVED, that the City Council  
delegate and it does hereby delegate to the incumbent of the office of  
City Manager authority to make determinations under Section 21023(c),  
Government Code, on behalf of the agency, of disability and whether  
such disability is industrial and to certify such determinations and  
all other necessary information to the Public Employees' Retirement  
System; and,

BE IT FURTHER RESOLVED, that the City Manager is authorized  
to make applications on behalf of the agency for disability retirement  
of employees in employments in which they are local safety members and  
to initiate requests for reinstatement of such employees who are  
retired for disability.

BE IT RESOLVED FURTHER, that the disability retirement  
certification procedure for local safety members be as follows:

1. Determination of Disability. Whenever an application  
for disability retirement is filed with the Public Employees'  
Retirement System, (PERS), by any party, for disability retirement of a  
local safety member, as that term is defined by the applicable  
provisions of state law, the City Manager shall thereafter conduct a  
hearing to determine whether said employee is incapacitated physically  
or mentally for the performance of the duties of his/her position.  
When it is determined that said employee is so incapacitated, the City  
Manager shall further determine whether such incapacity is industrially  
related.

2. Representation at Hearing. The City shall be  
represented at said hearing by the Assistant City Manager. The  
employee shall have the right to be represented by himself or any other  
person he/she so selects.

3. Evidence of Disability. Prior to the notice of hearing, the City shall, upon receipt of an application for disability retirement of a member, order a medical and/or a psychiatric examination, to determine whether the member is incapacitated for the performance of duty. The results of the examination shall be submitted to, and considered by, the City Manager at said hearing. The employee shall have the right to submit any independent medical evidence at said hearing.

In addition, either party may submit any other and additional evidence, either oral or documentary, which is relevant to the determination as to whether the employee is incapacitated, physically or mentally, for the performance of the duties of his/her position.

4. Decision. Based upon the evidence presented, the City Manager shall determine whether such employee is incapacitated physically or mentally for the performance of the duties of his/her position, and whether such incapacity is a result of injury or disease arising out of and in the course of employment as a local safety member. If termination of employment for incapacity physically or mentally is made, such determination shall be certified to PERS which will then process the disability retirement.

5. Appeal. If the employee wishes to appeal the determination of capacity by the City Manager, he/she may file written notice of such appeal within 90 days requesting an administrative hearing before the Personnel Board of Review. The Personnel Board of Review procedures shall be in conformity with the Administrative Procedure Act in which an administrative record will be generated at the hearing. That body will review all evidence the City or the employee wishes to submit. The Personnel Board of Review retains the right to make factual determinations and render a final decision on the disability status of the employee. Following the conclusion of the hearing the Personnel Board of Review shall prepare the findings and transmit those findings by way of certification to PERS.

If the Personnel Board of Review determines that the employee is not incapacitated, and the employee wishes to appeal the ruling of the Board, he/she may file a petition for writ of mandate in the Superior Court of San Joaquin County within thirty days from date of the determination.

I hereby certify that the foregoing Resolution No.88-16 was passed and adopted by the City Council of the City of Lodi in regular meeting held February 3, 1988 by the following vote:

Ayes : Council Members - Hinchman, Pinkerton, Snider and Olson (Mayor)

Noes : Council Members - None

Absent: Council Members - Reid

*Alice M. Reimche*

Alice M. Reimche  
City Clerk